Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237 Phases One and Two

COMMENTS

National Exchange
Carrier Association, Inc.

100 South Jefferson Road
Whippany, NJ 07981

June 7, 1994

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Summary

The National Exchange Carrier Association, Inc. (NECA) states that it would be willing to administer a funding plan for North American Numbering Plan (NANP) administrative expenses if the Commission determines that such a mechanism would be warranted. NECA's experience in administering the Universal Service Fund (USF), Lifeline Assistance (LA) programs, and the Telecommunications Relay Service (TRS) shared fund make it a logical choice for NANP fund administrator.

With respect to NANP policy and administrative functions, NECA believes that there is a critical need for the Commission, in cooperation with other World Zone 1 regulators, to assume primary responsibility for setting numbering policy and assignment guidelines. As the telecommunications environment becomes increasingly competitive, ultimate responsibility for deciding difficult numbering plan and allocation issues clearly rests with the Commission and other World Zone 1 regulators. While it may be helpful for the Commission to establish a new committee or board to advise it with respect to numbering policy, it may make more sense to rely on current industry forums, especially if a new policy board is likely to encounter the same problems faced by industry groups in resolving controversial issues.

Finally, it is premature at this stage of the proceeding to

eliminate NECA as a potential candidate for the role of NANP administrator. As the Notice recognizes, NECA has considerable experience with implementation of complex Commission rules and orders, and also has substantial operational resources that enable it to administer a variety of programs and service functions with integrity and efficiency.

Selection of an administrator should be based on competence, integrity, industry knowledge and efficiency. If NANP administrative tasks are considered ministerial, performed according to specific Commission rules and subject to the Commission's oversight, concerns about potential bias on the part of the administrator should be substantially mitigated. Until the administrator's role is more clearly defined, the Commission should not rule out NECA simply on the basis of its affiliation with local exchange carriers.

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COMMENTS

In its April 4, 1994 Notice of Proposed Rulemaking,[1] the Commission seeks comment on a number of issues relating to the administration of the North American Numbering Plan (NANP), including, in Phase One, identification of potential entities to replace Bell Communications Research, Inc. (Bellcore) as NANP administrator. The Commission also seeks comment on possible mechanisms to recover the costs of regulating and administering the NANP.

In these comments, the National Exchange Carrier Association, Inc. (NECA) states that it would be willing to administer a funding plan for NANP administrative expenses if the Commission determines that such a mechanism is warranted. NECA's experience in administering the Universal Service Fund (USF), Lifeline Assistance (LA) programs, and the Telecommunications

[1] Administration of the North American Numbering Plan, CC Docket No. 92-237, Notice of Proposed Rulemaking, FCC 94-79 (released April 4, 1994).

Relay Service (TRS) shared fund make it a logical choice for NANP fund administrator.

With respect to NANP policy and administrative functions, NECA believes that there is a critical need for the Commission, in cooperation with other World Zone 1 regulators, to assume primary responsibility for setting numbering policy and assignment guidelines. As the telecommunications environment becomes increasingly competitive, ultimate responsibility for deciding difficult numbering plan and allocation issues clearly rests with the Commission and other World Zone 1 regulators.

NECA also shows that it is premature at this stage of the proceeding to eliminate it as a potential candidate for the role of NANP administrator. As the Notice recognizes, NECA has considerable experience with implementation of complex Commission rules and orders, and also has substantial operational resources that enable it to administer a variety of programs and service functions with integrity and efficiency.

Selection of a NANP administrator should be based on competence, integrity, industry knowledge and efficiency. If NANP administrative tasks are considered ministerial, performed according to specific Commission rules and subject to the Commission's oversight, concerns about potential bias on the part of the administrator should be substantially mitigated. Until the administrator's role is more clearly defined, the Commission should not rule out NECA simply on the basis of its affiliation with local exchange carriers (ECs).

I. NECA FUNCTIONS AND PROGRAMS

NECA is a unique entity, formed in 1983 at the direction of the Commission as a non-profit membership association of local exchange carriers (ECs). Unlike any other telecommunications entity, NECA's functions and governance are directly regulated by the Commission, under rules set forth in Subpart G of Part 69 of the Commission's rules and regulations.[2] NECA is incorporated in Delaware, and operates on a not-for-profit basis.

NECA was initially created to act as agent for all local exchange carriers for purposes of filing access tariffs and for collecting and distributing access revenues in ways that mirror traditional telephone industry arrangements for assuring universal service.[3] Reflecting this mission, the Commission's rules require that members of NECA's Board of Directors represent various subsets of the EC industry.[4] Three directors represent

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[2] See 47 C.F.R. §§ 69.601 - 612. See generally, MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150 (1982); Third Report and Order, 93 FCC 2d 241, 333 (Access Charge Order), recon. 97 FCC 2d 708 (1983) , further recon., 97 FCC 2d 834, 99 FCC 2d 708, aff'd in principal part sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

[3] See Access Charge Order, 93 FCC 2d at 333. NECA activities are governed by specific provisions of the Commission's access charge rules. See, e.g., 47 C.F.R. § 69.603.

[4] See 47 C.F.R. § 69.602.

the Bell Operating Companies on NECA's Board, three represent mid-sized ECs, and nine directors represent the remaining small ECs.[5] Since 1991, two independent outside directors have served on NECA's Board, pursuant to temporary waivers of the rules granted by the Commission.[6] Their role is to bring yet another perspective to policy decisions.

NECA's responsibilities under the Commission's access charge rules include the preparation of cost and demand forecasts for pool companies, filing and defense of tariffs reflecting pool revenue requirements, and calculation of Long Term Support revenue requirements to be paid by non-pooling member companies. NECA is also responsible for administering the interstate average schedules, which permit telephone companies to determine interstate revenue requirements through the use of statistically-based formulas, rather than through complex cost studies.[7]

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[5] Id.

[6] See National Exchange Carrier Assoc., Inc., Order Granting Waiver, 6 FCC Rcd 5403 (1991); National Exchange Carrier Association, Inc., Order, 7 FCC Rcd 2050 (1992) (granting NECA petition to extend voting rights to outside directors); National Exchange Carrier Assoc., Inc., Order Granting Waiver, 7 FCC Rcd 4401 (1992); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, CC Docket No. 93-6, Order Extending Waiver, DA-94-428 (released May 6, 1994). NECA outside directors may not be current or former officers or employees of NECA or any of its members. Outside directors may not have business relationships or other interests that could interfere with their judgment. See Order Granting Waiver, 6 FCC Rcd at 5403.

[7] As required by section 69.606(a) of the Commission's rules, NECA seeks to ensure that its average schedule formulas

NECA member telephone companies provide service in all 50 states, Puerto Rico, the U.S. Virgin Islands and in the Territory of Micronesia. Through its relationship with its member companies, and its involvement in numerous telecommunications industry forums and work groups, NECA has gained substantial experience with respect to domestic and other World Zone 1 telephone companies.

In addition to its access tariff and pooling functions, NECA also acts, in accordance with Commission rules, as administrator of the Commission's Lifeline Assistance (LA) and Universal Service Fund (USF) programs. These programs are a critical part of the Commission's access charge plan. Lifeline Assistance, which consists of two separate programs targeted specifically to needy subscribers, helps low-income Americans obtain service initially, and stay on the network.[8] Under the Commission's

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simulate the disbursements that would be received by a cost company that is representative of average schedule companies.

[8] One LA program (the "SLC Waiver Program") exempts qualifying subscribers from paying all or part of the federal subscriber line charge, when matching state benefits are provided under a certified state plan. See 47 C.F.R. § 69.104(k). The second LA program ("Link Up America") offsets up to one-half of the connection charges (up to $30), and/or allows for a deferred payment schedule for connnection charges, for qualifying subscribers. See 47 C.F.R. §§ 36.701 - 721. See generally MTS and WATS Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Order, 2 FCC Rcd 2953 (1987) (NTS Recovery Order), aff'd on recon., 3 FCC Rcd 4543 (1988), aff'd, Dist. of Columbia Pub. Serv. Comm'n v. FCC, 897 F.2d 1168 (D.C. Cir. 1990); see also MTS and WATS Rate Structure, Recommended Decision and Order, 2 FCC Rcd 2324, 2332 (1987).

rules, NECA is responsible for filing tariffs designed to recover projected LA revenue requirements, collecting LA charges under tariff from qualified interexchange carriers, and reimbursing ECs for costs incurred under these programs.

The Universal Service Fund provides assistance to high cost telephone companies (i.e., those with costs in excess of 115 percent of the national average). NECA's responsibilities as USF administrator include collection and verification of cost data, tariffing, billing and collection of USF revenue requirements, and distribution of resulting revenues to qualified high-cost exchange carriers.[9]

In 1993, the Commission appointed NECA administrator of the interstate Telecommunications Relay Service (TRS) shared fund.[10] Mandated by Title IV of the Americans with Disabilities Act of 1990, TRS permits persons with hearing and/or speech impairments to communicate by telephone with the assistance of specially-trained operators.

Funding for interstate TRS differs from the LA/USF funding

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[9] See 47 C.F.R. §§ 36.601 - 641, 69.116, .603(c) and .611. Among other things, the Commission's rules require NECA to file tariffs and bill LA/USF amounts to IXCs with more than .05 percent of nationwide presubscribed lines (PSLs). Currently, 28 interexchange carriers, accounting for 98 percent of nationwide PSLs, exceed this threshold.

[10] See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order, 8 FCC Rcd 5300 (1993).

mechanism, in that the Commission's rules require all common carriers to contribute to an interstate shared fund on the basis of their interstate revenues.[11] As administrator of the fund, NECA collects and verifies cost data from TRS providers, develops estimates of TRS revenue requirements, collects TRS contributions from interstate carriers under a Commission-prescribed contribution factor, and distributes these amounts to TRS providers based on a Commission-approved payment formula.[12] TRS providers include exchange carriers, interexchange carriers, state relay agencies and non-profit agencies operating state TRS programs.

On behalf of all of its member companies, NECA files and maintains NECA Tariff F.C.C. No. 4, which comprises about 30,000 pages of data on exchange carrier end office locations, access service offerings, and meet point billing percentages. In conjunction with its Tariff No.4 responsibilities, NECA also acts as maintenance agent for ANSI T1.222 (Identification of Exchange Carrier Company Names and Codes for the North American Telecommunications System). Developed by the American National

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[11] 47 C.F.R. § 64.604(c)(4)(iii)(A).

[12] See 47 C.F.R. § 64.604(C)(4). Currently, the interstate TRS contribution factor is set at .00030 annual gross interstate revenues. The net TRS fund requirement for 1994 is $21.387 million. This amount includes a credit of $12.999 million for excess collections in the initial TRS fund year. See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Order, DA 94-298 (released April 5, 1994).

Standards Institute, ANSI T1.222 establishes rules and guidelines for assigning both NECA numeric 4-digit company codes and alpha-mnemonic company codes used by Bellcore. NECA's responsibilities as maintenance agent for ANSI T1.222 include maintenance and publication of a directory of exchange carrier codes, assignment of new codes, and publication of cross-references between the two code sets numeric and alpha-mnemonic codes. The code sets themselves are used in mechanized systems throughout the industry to facilitate the exchange of information.

In addition to the experience and expertise acquired though these efforts, NECA also has substantial data processing resources and facilities in place.[13] These combined resources would permit NECA to assume NANP-related responsibilities on short notice, if necessary to accomplish the Commission's objectives in this proceeding.

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[13] NECA headquarters are located in Whippany, New Jersey. In addtion, NECA maintains small regional offices in or near Atlanta, Chicago, Denver, Pmaha, St. Louis, and San Francisco, which could facilitate eventual transfer of CO code administration functions from the Bell Operating Companies to NECA if the Commission were to find it in the public interest to do so. See infra, pp. 14-17.

II. NECA IS WILLING TO ACT AS ADMINISTRATOR OF A NANP FUNDING MECHANISM, IF THE COMMISSION DIRECTS IT TO DO SO.

The Commission tentatively finds in the Notice that it should impose fees to recover its own costs of regulating numbering resources.[14] The Notice also suggests, however, that recovery of additional NANP administrative costs might be obtained by imposing user fees; through a mandatory numbering surcharge on one of NECA's existing funds; or by authorizing the use of surpluses from one or more of these funds, such as the Telecommunications Relay Service fund.[15]

NECA could implement a TRS-type funding mechanism for NANP administrative funding quickly and economically, if the Commission determines that this approach is warranted. Under this approach, payment responsibility would be allocated among all interstate carriers based on each carrier's relative percentage of interstate revenues. For U.S. carriers, line items could be added as necessary to the TRS fund collection worksheet. For other World Zone 1 participants, a nominal fee could be charged.

One advantage of a TRS-type approach is its simplicity, especially since the amounts involved are expected to be comparatively small. NECA could also administer a system based on user fees, if this method is determined to be feasible. A

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[14] Notice at 10-12.

[15] Id. at 12, ¶ 37.

user fee approach would be consistent with the method proposed by the Commission to recover its own costs of regulating NANP. Reliance on a single NANP funding method would also reduce potential confusion. Given the small amounts involved for NANP administrative expenses, however, the costs of a user-fee type system might outweigh the benefits.

NECA does not believe that "surplus" amounts should be diverted from the TRS fund or other existing funds for NANP administrative expenses. Surplus conditions occasionally occur in the TRS and LA/USF funds because of timing differences and other mismatches between collections and disbursements. These surpluses may be offset by occasional fund shortfalls. In either case, NECA is required to "resize" surpluses and shortfalls in the LA/USF and TRS funds. If, for example, a surplus condition exists in any of these funds, Commission rules require NECA to reduce the next period's revenue requirement by the amount of the surplus. This mechanism assures that ratepayers contribute no more and no less than the amount required.

Rather than rely on the occurrence of surplus conditions to fund NANP administration, the Commission should require the administrator to calculate an explicit projected revenue requirement for NANPA. Doing so would assure payers that funds will be utilized only for the specific purposes authorized by the Commission.

III. THE COMMISSION SHOULD ASSUME PRIMARY RESPONSIBILITY FOR SETTING NUMBERING POLICY.

The Notice recognizes the important role that industry consensus forums have played in the development of numbering policy in recent years, particularly the Industry Numbering Committee (INC) and the Future of Numbering Forum (FNF). Because of concerns that such forums may not be able to resolve difficult issues expeditiously, the Commission seeks comment on whether a new, more formal policy board should be created to assist regulators in developing and coordinating numbering policy.[16] The Notice proposes that such a board might guide the new NANP administrator and either resolve disputes itself, encourage mediation or arbitration, or refer such matters to the Commission.[17]

NECA does not support the creation of a formal committee or board to set numbering policy or assume responsibility for NANP administration. As new technology-based services become more complex and the telecommunications environment becomes more competitive, questions can be expected to arise with respect to any non-governmental entity's authority to make "policy" determinations on numbering issues.[18] Even if the Commission is

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[16] Notice at 8.

[17] Id. at 8-9.

[18] Similar questions arose in 1983 when NECA was created. In response to claims that the Commission had improperly

able to delegate numbering policy authority to an outside group, industry participants may face significant potential antitrust risks, as numbering decisions are made that unavoidably advantage or disadvantage particular groups of competitors. Finally, because dissatisfied parties would inevitably seek further review of a policy board's decisions, addition of a policy board could add unnecessary delay to the NANP policy making and dispute resolution process.

Rather than establish a new entity, NECA believes that the Commission, in cooperation with other World Zone 1 regulators, should assume primary responsibility for regulating numbering policy. This responsibility would include establishing policies and guidelines regarding major numbering issues. The Commission may also find it necessary to supervise the activities of the NANP administrator either under contract or by promulgating rules that establish specific responsibilities for the administrator and guidelines for issuing numbering resources. Exercise of close Commission oversight will assure that numbering administration is carried out in a fair, competitively neutral manner, and will also help assure that the administrator is

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delegated its authority to NECA, the Commission affirmed that NECA "will not be performing any adjudicatory or other governmental functions; it will be preparing tariffs . . . [that] will be reviewed by the Commission under the same panoply of procedural and substantive rules that apply to a tariff filed by an individual carrier." MTS and WATS Market Structure, Order, 97 FCC 2d 682, 755 (1983).

insulated from potential antitrust and ordinary business liabilities associated with numbering assignment.[19]

The Commission should also continue to rely on existing industry-sponsored groups to address numbering issues to the extent possible. Industry forums, such as INC and FNF, provide adequate opportunity for interested parties to identify, discuss and in some cases resolve numbering issues. While it is true, as the Notice points out, that these groups find it difficult to resolve controversial numbering issues,[20] it is unlikely that a new policy board would be in any better position to resolve such issues.

In a competitive environment the Commission will be required to assume a more active role in regulating numbering than it has in the past. Since a policy board would probably not be in a position to resolve major issues, and may not even be able to adjudicate disputes between parties without facing legal risks, the Commission, in conjunction with other World Zone 1 regulators, should be prepared to assume primary responsibility both for numbering policy and oversight of NANP administrative

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[19] Courts have made clear that, in order to obtain immunity from antitrust liability under the Parker v. Brown "state action" doctrine, see 317 U.S. 341 (1943), there must not only be a clear declaration of policy on the part of the agency but "active supervision" as well. See, e.g., F.T.C. v. Ticor Title Insurance Co., ___ U.S. ___, 112 S. Ct. 2169 (1992).

[20] Examples of such issues include assignment of service codes, expansion of codes, introduction of new NPAs, number reclamation procedures, etc.

functions.[21]

IV. THE COMMISSION SHOULD NOT AT THIS TIME EXCLUDE NECA FROM CONSIDERATION AS A POTENTIAL NANP ADMINISTRATOR.

The Notice also recognizes the potential advantages of assigning NANP administrative responsibilities to NECA, but nevertheless tentatively finds that NECA would be unsuitable for NANP administrative duties:

> We have also considered existing, non-government entities, including [NECA] and the Alliance for Telecommunications Industry Solutions (ATIS, formerly the Exchange Carrier Standards Association) as possible administrators of the NANP. . . . NECA has considerable knowledge of the telecommunications industry and significant experience in collecting and disbursing funds for Commission programs. . . . Because of its close identification with the LEC industry segment, however, NECA -- like Bellcore today -- would inevitably face questions regarding its impartiality. For this reason we tentatively conclude that NECA could not effectively perform these administrative functions at this time.[22]

While NECA is primarily qualified and interested in acting as fund administrator for NANP, it may be premature to exclude NECA from consideration as a potential NANP administrator at this stage of the proceeding. It is not at all clear, for example, how a non-governmental NANP administrator will be governed, what its

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[21] If the Commission decides to create a new numbering policy board, NECA recommends that it be limited to providing advice and recommendations to the Commission, and not given direct responsibility for policy making or supervision of the NANP administrator. A policy board should not be considered a substitute for direct Commission involvement.

[22] Notice at para. 15.

functions will be, or what degree of discretion will be available to it in performing those functions. For example, if only the "ministerial tasks of assigning national numbering resources and other less controversial functions"[23] are vested in the NANP administrator (leaving the Commission to focus its resources "upon oversight and larger numbering policy issues"[24]), then the affiliation status of a particular candidate could have less relevance.[25]

The key selection criteria, instead, would be administrative integrity, experience in implementing and interpreting complex Commission rules, a close working relationship with the Commission and industry participants, telephone industry experience, and operational resources. These, precisely, are NECA's qualifications.

To the extent that the Commission establishes clear rules, policies and guidelines for numbering, and remains actively involved in overseeing NANP administration, concerns about NECA's status as an EC organization may be outweighed by NECA's expertise, its status as a fully-regulated, non-profit entity,

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[23] Notice at 6, ¶ 14.

[24] Id.

[25] Questions remain, for example, as to whether the administrator will assume responsibility for assigning central office codes, how the interests of other world zone 1 countries will be accounted for, the degree of telecommunications expertise needed by the administrator, resource requirements for enforcement of numbering allocation guidelines, etc.

and the fact that, under close Commission supervision, the administrator would have no discretion to set policy or adopt unfair practices.[26] In any case, until the scope of the administrator's duties becomes clear, and it is determined how the administrator will be supervised, the Commission should not necessarily exclude any entity from consideration simply on the basis of industry affiliation.

V. CONCLUSION.

NECA is willing to assume NANP funding responsibilities, if the Commission determines that a funding mechanism is needed for NANP administrative expenses. With respect to NANP policy and administration, NECA believes that the Commission should assume primary responsibility for setting numbering policy, and should continue to rely on existing industry forums for identification of issues and resolution of technical matters rather than establish a new policy board. Finally, given the uncertainty surrounding the actual duties of the NANP administrator and the limited discretion that might be vested in the administrator,

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[26] To ensure this result, the Commission's rules should specifically insulate the administrator from policy development or resolution of disputes. The Commission may also wish to consider including provisions in its rules that would limit, to the extent possible, the NANP administrator's liability for errors in numbering assignments. Uncertainty with respect to potential liabilities may make it difficult or prohibitively expensive for the administrator to obtain business liability insurance.

NECA believes that it is premature to conclude that NECA would not be a suitable administrator. To the extent that NANP administrative duties are limited to ministerial functions, with little if any policy discretion, concerns about potential bias on the part of the administrator should be substantially mitigated.

Respectfully submitted,

National Exchange Carrier Association, Inc.

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Regulatory Manager

June 7, 1994

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Richard A. Askoff

Its Attorney

June 7, 1994